THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 11188 OF 2005

DATED: 14-07-2006

BETWEEN:

B. Venkaiah, S/o. Venkata Subbaiah … Petitioner

And

Vijayawada Municipal Corporation,
Rep. by its Commissioner,
Jawaharlal Nehru Buildings,
Vijayawada …
Respondent

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO. 11188 OF 2005

ORDER:

The writ petition is filed for a writ of Mandamus declaring the proceedings bearing Rc.Peshi No.2734/2004 dt.19-033-2004 issued by the respondent as illegal and ultravires to the provisions of Art.14 and 19 (1) (g) of the Constitution of India and also the provisions of Hyderabad Municipal Corporation Act and pass such other suitable orders.

It is stated that the petitioner has been carrying on the photo studio business under the name and style of "*UMA STUDIO*" at shop No.27 of Kaleswara Rao Market, Vijayawada, having taken on lease more than three decades, paying rents regularly without committing any default, and the main entrance to the Market is on the Northern side whereas the entrance of the petitioner's shop is on the eastern side. All other business concerns, which are abutting the petitioner's shop are facing northern side, towards the main bazaar. There is a window of 2' width & 4' height to the shop of the petitioner on northern side. If the height of the window is increased to 6' converting the window into a doorway, he will have an entrance from the northern

side and for his neighbours. Several other factual details had been narrated. It is also stated that in relation to this aspect, representations were made on 09-12-2004 and also 18-11-2004. On 10-01-2005, after considering all the circumstances, the proceedings bearing No.Rc.Peshi No.2734/2004 dt.01-02-2005 had been issued by the respondent granting permission to alter the door in the place of window without causing any damage to the structure, under the supervision of Engineering Section. It is further stated that having been received the permission order on 01-02-2005 for the purpose of making necessary alterations he has collected the necessary cement and other building material on 05-02-2005 and started construction during night time after closure of other shops to avoid inconvenience to the abutting shop owners. After some time, the subordinates of the respondent having arrived at the spot directed him to stop from proceeding further, without seeing the permission granted by the respondent on 01-02-2005. Having no other alternative, he stopped the further alteration work and had approached the Commissioner for enlightening the Commissioner with the facts. The Commissioner having visited the spot and satisfied with the repairs being made asked the petitioner to wait for some time to proceed further with the construction work. In accordance with the commandment, with a fond hope, the petitioner had stocked the construction material inside the business place. But to his surprise, he had received an endorsement in proceedings from the respondent to the effect that the earlier permission granted on 01-02-2005 is cancelled on the ground that elevation part of the building would be defaced. Having received the proceedings impugned, petitioner submitted a detailed representation dated 28-03-2005 requesting the respondent to reconsider the whole issue and withdraw the impugned proceedings as early as possible.

In the counter-affidavit filed by the respondent, in paras 3 and 4 it was pleaded as hereunder:

"It is submitted that the shopping block in which

the petitioner is running a Photo Studio in the name and style of Uma Studio in Shop Room No.27 has got 28 shop rooms. As per the approved plan 15 shops are facing to north side road and 13 shops are facing to south side. It is submitted that the Shop No.27 in which the petitioner is running a studio is facing east side and it is the first shop to the main entrance from north side road to the rear side shop rooms. The customers are passing freely through the main entrance to go to rear side shops as Shop No.27 is at the beginning of the main entrance and there are no hurdles to the customers to go to Shop No.27.

It is further submitted that it is true that the petitioner was accorded permission to make alteration of door in the place of window with a condition without causing any damage to the structure and under the supervision of the Engineering Section. The petitioner has not informed the engineering wing before taking up the modification work to the structure, moreover started the alteration work during night time. The shopping block is an old stone masonry structure having ornamental work, hence repairs or modifications have to be made during day time with due care to the structural stability as well as to the architectural features. Just below the proposed window into door, there is an inaugural plateau indicating as to the date of inauguration by Sri Tanguturi Prakasam, Hon'ble Chief Minister of Andhra Pradesh. If the proposed window is converted into door his plateau will be damaged and this may affect the sentiments of all the public at large and will affect the structural stability of the building. In view of the reasons stated above the permission for alteration of window to door granted to the petitioner on 01-02-2005 has been cancelled."

Taking into consideration, the counsel for the writ petitioner also had placed before this Court the endorsement in Rc.Peshi.No.2734 of 2004, dated 01-02-2005 issued by Vijayawada Municipal Corporation and the endorsement rules are hereunder:

"As per the remarks of the Executive Engineer-1

> cited in the reference 2nd and also with your reference letter 1st cited, permission is hereby accorded to alterate of door in place of window in Shop No.27 of K.G. Market, North Block, on condition without causing any damage to the structure under the supervision of the Engineering Section."

Taking the over all facts and circumstances into consideration inasmuch as it is stated that a detailed representation dated 28-03-2005 is made requesting the respondent to reconsider the whole issue and withdraw the impugned proceedings as early as possible, this court is of the opinion that it is just and proper to direct the respondent to dispose of the said representation in accordance with law within a period of six weeks from the date of receipt of this order.

Writ petition is accordingly disposed of. No order as to costs. It is needless to say that the petitioner also to be put on notice before taking any decision in this regard.

_____

P.S.NARAYANA, J.

Dated: 14-07-2006
rns